

# **Exhibit 34**

Kevin G. McAnaney

March 18, 2016

New York, NY

Page 1

1                   IN THE UNITED STATES DISTRICT COURT  
2                   FOR THE DISTRICT OF NEW JERSEY

3                   \_\_\_\_\_  
4           THE UNITED STATES OF           )  
5           AMERICA, ex rel. STEVE        )  
6           GREENFIELD,                   )  
7                   Plaintiff,                )

8                   -vs-                        )   Docket No.  
9           MEDCO HEALTH SYSTEMS, INC., )   1:12-CV-522  
10          ACCREDITO HEALTH GROUP, INC., )  
11          and HEMOPHILIA HEALTH         )  
12          SERVICES, INC.,                 )  
13                   Defendants.                )

14                   \_\_\_\_\_  
15                                   LATHAM & WATKINS LLP  
16                                   885 THIRD AVENUE  
17                   NEW YORK, NEW YORK   10022-4834  
18                                   FRIDAY, MARCH 18, 2016  
19                                   9:16 A.M.

20  
21                                   VIDEOTAPED DEPOSITION OF  
22                                   KEVIN G. MCANANEY  
23          REPORTED BY:  
24          DEBRA SAPIO LYONS, RDR, CRR, CCR, CPE  
25          JOB NO. 63193

1 Q. Doesn't have anything to do with the  
2 Hemophilia Association of New Jersey; right?

3 A. No, it does not. It's just another  
4 patient advocacy group.

5 Q. Did you conduct, as part of your  
6 methodology in this case, any kind of comparison of  
7 what the organization referred to in Advisory  
8 Opinion Number 99-10 -- how it compares with the  
9 Hemophilia Association of New Jersey?

10 A. No, I did not.

11 Q. Now, you indicated that in this case  
12 you believe the Hemophilia Association recommended  
13 certain home healthcare providers; is that right?

14 A. That's correct.

15 Q. Okay. What specifically in the  
16 factual record serves as the basis for your opinion  
17 that the Hemophilia Association of New Jersey  
18 recommended home healthcare providers?

19 A. They have a list during this relevant  
20 period. They had a list of HSI approved  
21 healthcare -- home care providers I believe they  
22 were, and they disseminated that information. It  
23 was on their website. It was fairly -- I mean it  
24 got wide distribution among their membership. They  
25 occasionally sent out letters, incorporated it.

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1 I -- there are letters where they sent them to the  
2 state HTCs.

3 Q. Okay. Other than the list of HSI  
4 home healthcare providers, is there anything else  
5 that you're referring to when you talk about the  
6 Hemophilia Association of New Jersey recommending  
7 home healthcare providers?

8 A. I -- yes, they -- they -- there is at  
9 least correspondence in, I think 2008 or something  
10 when -- when -- no. Well, yeah -- 2008 I believe  
11 when somebody -- that they sent out brochures for a  
12 company that they had just added to the list to --  
13 it appears to their members, it was addressed to  
14 their members. They -- there's a correspondence I  
15 believe even the -- the piece I -- the letter that I  
16 showed you that I brought today informing people. I  
17 think that's -- and there's several -- there's  
18 several other similar letters. In addition, there  
19 is correspondence when -- in an e-mail chain when  
20 they're talking about BioScript that -- and there  
21 had been a dispute with Aetna. Aetna tried to use a  
22 non-approved -- non-New Jersey-approved home care  
23 company, that did not go, and they -- but one of the  
24 home care companies Aetna could use was -- I think  
25 it -- oh, I think it was BioScript; and, in fact, a

1 Q. Okay. How is this internal e-mail  
2 about BioScript and Aetna a recommendation of home  
3 healthcare companies?

4 THE VIDEOGRAPHER: Excuse me,  
5 counsel, your microphone.

6 MR. BOEHM: Thank you.

7 A. I think it is evidence of -- it is  
8 evidence of the steps they took to promote these  
9 companies.

10 Q. In what way?

11 A. Well, they contacted beneficiaries  
12 and promoted one company; and -- and were  
13 successful.

14 Q. In this case they promoted BioScript,  
15 is that what you're saying?

16 A. Yes.

17 Q. Are you aware of any correspondence  
18 in the factual record or any document at all where  
19 in your view HANJ is expressly recommending not  
20 BioScript but Accredo to hemophilia patients in the  
21 State of New Jersey?

22 A. No, only an -- only evidence of a  
23 non-recommendation.

24 Q. What are you talking about?

25 A. I'm talking about the -- the

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1 Q. Why is that not fair?

2 A. Because I think the record shows that  
3 they did have influence and that's what I base my  
4 -- that, and I think people would have thought they  
5 did and I think the record shows that they did.

6 Q. What specifically are you -- are you  
7 relying upon in the factual record to conclude that  
8 HANJ did have what you would call special influence  
9 in the hemophilia community in New Jersey?

10 A. Well, the fact that they -- they  
11 credited themselves with switching the BioScript  
12 patients at Aetna and they also obviously on several  
13 occasions threatened Accredo with losing patients.

14 Q. Anything else?

15 A. No, I think that shows that they --  
16 they had influence and they thought they had  
17 influence.

18 Q. Nothing else that you're pointing to  
19 in the factual record; right?

20 A. Well, and -- and -- and the letters  
21 that came in subsequent to the 2011.

22 Q. Have you conducted any type of  
23 analysis to try and determine whether, in fact, HANJ  
24 actually referred any particular patient to  
25 Accredo's home healthcare services?

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1 A. No.

2 Q. You don't know whether that actually  
3 took place or not; correct?

4 A. I assume it didn't.

5 Q. Why do you assume that it didn't?

6 A. Well, I haven't seen any evidence  
7 that they referred specific patients.

8 Q. And you're not expressing the opinion  
9 that either you or anybody else could reasonably  
10 conclude that HANJ referred specific patients to  
11 Accredo services based on this factual record;  
12 correct?

13 A. Not that I'm aware of, no.

14 Q. Have you made any effort to determine  
15 what hemophilia patients in the State of New Jersey  
16 would have understood about the nature of the list  
17 of home care companies on the website?

18 MS. POSERINA: Objection to form.

19 A. No, I have not.

20 Q. So as you sit here today, you cannot  
21 reasonably offer any opinion about what the actual  
22 hemophilia patients in New Jersey would have took  
23 from the information provided by HANJ on its website  
24 with respect to home healthcare companies; correct?

25 MS. POSERINA: Objection to form.

1 So I think they did have -- they thought they had  
2 and had some influence.

3 Q. In your review of the factual record,  
4 have you been able to identify any specific instance  
5 where you believe HANJ influenced a specific  
6 hemophilia patient to choose Accredo as its home  
7 healthcare company?

8 A. No.

9 Q. As part of your work as an expert in  
10 this case, did you endeavor to understand the nature  
11 of the Hemophilia Insurance Purchase Program that  
12 HANJ was administering from 2007 to 2012 on behalf  
13 of the State of New Jersey?

14 A. I believe I understood it.

15 Q. What did you do to try and understand  
16 the nature of that Patient Assistance Program?

17 A. I mean I think I read the discussions  
18 that were in the descriptions that were in the -- in  
19 the -- in the depositions, in the documents.

20 Q. And by the way, do you agree with the  
21 characterization that the Hemophilia Insurance  
22 Purchase Program was a Patient Assistance Program  
23 for purposes of our discussions of OIG guidances?

24 MS. POSERINA: Objection to form.

25 A. Yes, a type of Patient Assistance



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1 Q. Do you recall that the program was  
2 established pursuant to funds provided by the State  
3 Legislature?

4 A. Yes.

5 Q. And do you know that funds from the  
6 State of New Jersey continue to help support the  
7 Hemophilia Insurance Purchase Program?

8 A. Yes, I do.

9 Q. Does that in any way impact any of  
10 your opinions in this case?

11 A. No.

12 Q. Did you look into the question of  
13 whether or not the Hemophilia Insurance Purchase  
14 Program in New Jersey was designed to be available  
15 to individuals who were receiving federal health  
16 benefits?

17 A. I understood it was not available to  
18 people getting federal health benefits.

19 Q. And you agree that there's nothing in  
20 the factual record to suggest that New Jersey's  
21 Hemophilia Insurance Purchase Program was designed  
22 to be available to federal beneficiaries; correct?

23 MS. POSERINA: Objection to form.

24 A. Correct.

25 Q. On Page 7 of your expert report, you

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1                   You've identified a few specific OIG  
2    guidances on this subject. Have you been able to  
3    identify any OIG guidance on the subject of how to  
4    structure a Patient Assistance Program that is  
5    designed not to include benefits to federal  
6    beneficiaries?

7                   A.       No.

8                   Q.       In other words, all of the OIG  
9    guidances that you're aware of and that you refer to  
10   in your report exclusively concern Patient  
11   Assistance Programs that are design to provide  
12   assistance to federal beneficiaries; correct?

13                  A.       In part, yes.

14                  Q.       What do you mean when you say in  
15   part?

16                  A.       Well, most of those provide --  
17   those -- most of the Patient Assistance Programs  
18   provide to both private and federal employees I  
19   mean.

20                  Q.       Okay. All of the OIG opinions or  
21   guidances --

22                  A.       Yeah.

23                  Q.       -- that you've identified or that  
24   you've referred to in your report concern the  
25   evaluation of Patient Assistance Programs that

1 include the provision of some kind of assistance to  
2 federal beneficiaries; correct?

3 A. Correct.

4 VIDEO TECHNICIAN: Excuse me,  
5 counsel. Five minutes.

6 BY MR. BOEHM:

7 Q. Do you agree that that -- strike  
8 that.

9 Do you agree that it would be a  
10 meaningful consideration for experienced healthcare  
11 counsel, regulators, and industry participants in  
12 considering OIG guidances that none of the OIG  
13 guidances address Patient Assistance Programs  
14 designed to exclude federal beneficiaries?

15 MS. POSERINA: Objection to form.

16 THE WITNESS: Can you just read  
17 that again? I want to be sure I get it  
18 right.

19 (The following portion of the  
20 record is read by the Court Reporter:

21 "QUESTION: Do you agree that it  
22 would be a meaningful consideration for  
23 experienced healthcare counsel,  
24 regulators, and industry participants in  
25 considering OIG guidances that none of the

1           OIG guidances address Patient Assistance  
2           Programs designed to exclude federal  
3           beneficiaries?")

4                       THE WITNESS:   Yes.

5   BY MR. BOEHM:

6           Q.       And why would that be meaningful for  
7           their understanding?

8           A.       Well, because the anti-kickback  
9           statute to the extent it's an -- it's an effective  
10          system that -- that excludes federal healthcare  
11          beneficiaries, then, as we discussed before, the  
12          anti-kickback statute would not appear to apply.

13          Q.       In Paragraph 48 of your report you  
14          indicate that there are over 30 favorable advisory  
15          opinions relating to donations to Patient Assistance  
16          Programs.

17                       Do you see that?

18          A.       Yes.

19          Q.       What do you mean by favorable  
20          advisory opinions?

21          A.       Well, a favorable advisory opinion is  
22          one that finds that based on the representations  
23          and -- made by the requester, that even if unlawful  
24          intent were present, the OIG would not apply any of  
25          its administrative sanction authorities to the -- to

1           A.       I would have to read it if it's to --  
2   to say it says nothing about them. I --

3           Q.       You can look it over, but I'll  
4   specifically direct your attention to the third  
5   column on the second page.

6                   There's a bullet point --

7           A.       Yes.

8           Q.       -- right in the middle of that column  
9   that says, "Nothing in the Part D program" --

10          A.       Yes.

11          Q.       -- "or in any OIG laws or regulations  
12   prevents pharmaceutical manufacturers or others from  
13   providing assistance to uninsured patients."

14          A.       Yes.

15          Q.       Do you see that?

16          A.       Yes.

17          Q.       Do you agree with that statement?

18          A.       Yes.

19          Q.       In other words, you agree that there  
20   is nothing in any OIG law or regulation that  
21   prevents providing assistance through a Patient  
22   Assistance Program to non-federal beneficiaries?

23          A.       Yes.

24          Q.       You indicate that in this bulletin  
25   the OIG identified five key safeguards.

1 Q. -- on Page 11 of your expert report.

2 A. Yes.

3 Q. You indicate here that, (as read):  
4 "HANJ's provision of data to Accredo on the use of  
5 Accredo's services by recipients of its insurance  
6 grants was contrary to OIG guidance and carried  
7 substantial risk under the anti-kickback statute."

8 MS. POSERINA: I'm sorry. Which  
9 paragraph did you say?

10 MR. BOEHM: I might have said the  
11 wrong one.

12 THE WITNESS: I think you did.

13 MS. POSERINA: I think you did.  
14 That's why -- you said 62.

15 MR. BOEHM: For the record, I -- I  
16 was referring to Paragraph 63.

17 MS. POSERINA: Okay.

18 THE WITNESS: Yes.

19 MR. BOEHM: You probably figured  
20 that out.

21 THE WITNESS: I did figure that  
22 out.

23 MS. POSERINA: I didn't. Thanks.

24 BY MR. BOEHM:

25 Q. Do you see that?

1 A. Yes.

2 Q. And you express this opinion in spite  
3 of the fact that recipients of the benefits for this  
4 Hemophilia Insurance Purchase Program were not  
5 Federal beneficiaries; is that correct?

6 A. That's correct.

7 Q. Why is that?

8 A. I think that's probably badly worded,  
9 but --

10 Q. How would you reword it sitting here  
11 today?

12 A. I, as I said, I think it was the  
13 failure to -- to follow those -- those guidelines  
14 would have, I think, raised concerns with healthcare  
15 counsel, regulators, et cetera, even though the  
16 statute wasn't necessarily implicated.

17 Q. Okay. So you agree that it wouldn't  
18 be appropriate to say that the provision of data to  
19 Accredo by HANJ for a Patient Assistance Program  
20 that does not cover Federal beneficiaries, quote,  
21 carried substantial risk, those are not words you  
22 would use sitting here today; correct?

23 A. That's correct.

24 Q. And you wouldn't say that that is an  
25 implication of the anti-kickback statute; correct?

1 A. Correct.

2 Q. And is that because, again, this  
3 Patient Assistance Program didn't cover Federal  
4 beneficiaries?

5 A. Correct.

6 MR. BOEHM: Why don't we just take  
7 a quick break if we could.

8 THE WITNESS: Okay.

9 MR. BOEHM: Five, ten minutes.

10 THE VIDEO TECHNICIAN: The time is  
11 5:01. We're going off the record.

12 (A recess is held from 5:02 p.m. to  
13 5:28 p.m.)

14 THE VIDEO TECHNICIAN: The time is  
15 5:27 p.m. and we are back on the record.

16 BY MR. BOEHM:

17 Q. Mr. McAnaney, during the break you  
18 indicated to me that there was something additional  
19 about your substantive communications with  
20 Ms. Poserina about your deposition testimony today  
21 that you had not remembered when I first asked you  
22 these questions, and that you wanted to now put on  
23 the record; is that right?

24 A. That's correct.

25 Q. Please go ahead and do so.



1 Q. Are you aware of any OIG guidance  
2 that is -- strike that.

3 Are you aware of any OIG guidance  
4 that addresses the issue of disparagement or as you  
5 termed in earlier today "non-recommendation" in the  
6 context of the anti-kickback statute?

7 A. Well, I think it's a -- it's a --  
8 I -- I would characterize it as a recommendation not  
9 to use, so I -- I think in that case it's -- it's a  
10 form of a recommendation.

11 Q. Okay. I'm asking you if you are  
12 aware of any OIG guidance that specifically  
13 addresses disparagement or a express recommendation  
14 not to use.

15 A. No, not that I'm aware.

16 Q. Are you aware of any literature that  
17 addresses that specific question?

18 A. No.

19 Q. Okay. You're not offering any  
20 opinions on the norms, standards, or practices of  
21 hemophilia treatment centers; correct?

22 A. No. I've already answered that.

23 Q. You're not offering any opinions in  
24 this case about the manner in which hemophilia  
25 treatment centers make -- discuss with patients